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IN THE

# Supreme Court of the United States

October Term, 1970.

No. 405.

In Re: Declaration of Taking of Certain Premises Located at the South Side of College Avenue and West Side of Coopertown Road and Extending to Derby Road, by the School District of Haverford Township.

THE CONNELLY FOUNDATION,
*Appellant,*

v.

SCHOOL DISTRICT OF HAVERFORD TOWNSHIP,
*Appellee.*

On Appeal From the Supreme Court of Pennsylvania.

## MOTION TO DISMISS APPEAL OR AFFIRM.

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## TABLE OF CONTENTS.


| | Page |
|---|---|
| Formal Motion | 1 |
| Opinions Below | 2 |
| Statutes Involved | 2 |
| Statement | 3 |
| Argument | 6 |
| I. On the Holding That the Appellant Is Not a "Religious Association" and Thus Its Property Not Exempt Under the Public School Code | 6 |
| II. On the Pledge of Appellee's Taxing Power as Sufficient Security for the Payment of Just Compensation for the Condemnation of Appellant's Property | 10 |
| Conclusion | 14 |
| Appendix—Statutes Involved | 15 |

## TABLE OF CITATIONS.

**Cases:**


Adler v. Board of Education, 342 U. S. 485 ..... 9
Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U. S. 308 ..... 9
Cardinale v. Louisiana, 394 U. S. 437 ..... 9
Cherokee Nation v. Southern Kansas Railway Company, 135 U. S. 641 (1890) ..... 11
Conrad v. Pittsburgh, 421 Pa. 492 ..... 13
Detweiler v. School District of Hatfield, 376 Pa. 555 ..... 13
Dewey v. Des Moines, 173 U. S. 193 ..... 9
Greenhall v. Woolworth, 361 Pa. 543 ..... 13
Hiawassee River Power Co. v. Carolina-Tennessee Power Co., 252 U. S. 341 ..... 9
Jerry v. Weist, 326 Pa. 554 ..... 11
Safeway Stores v. Oklahoma Grocers, 360 U. S. 334 ..... 9
Southwest Delaware County Municipal Authority v. Aston Township, 413 Pa. 526 ..... 13
Spahn v. Joint Board of School Directors, 381 Pa. 338 ..... 11
State Farm Mutual Ins. Co. v. Duel, 324 U. S. 154 ..... 9
Thomas v. Iowa, 209 U. S. 258 ..... 9
U. S. v. Seeger, 380 U. S. 163 ..... 6
Welsh v. U. S., 38 LW 4486 #76 October T, 1969 ..... 6
White River Lumber Co. v. Arkansas ex rel. Appelgate, 279 U. S. 692 ..... 9
Whitney v. California, 274 U. S. 357 ..... 9
Wilson v. Cook, 327 U. S. 474 ..... 9


**Statutes:**


Eminent Domain Code, Act of June 22, 1964, P. L. 84, Art. V, section 403(B) (26 P. S. 1-403) ..... 2
Public School Code, Act of March 10, 1949, P. L. 30:
Section 672, 24 P. S. 6-672 ..... 2, 12, 14
Section 721, 24 P. S. 7-721 ..... 2, 7, 10
Section 722, 24 P. S. 7-722 ..... 2

## TABLE OF CITATIONS (Continued).


Page

**Authority:**

76 C. J. S. Religious Societies, Sec. 1(a), p. 734 ..... 8

**U. S. Code:**

28 U. S. C. 1257 ..... 2, 10

## MOTION TO DISMISS OR AFFIRM.

Appellee moves the Court to dismiss the Appeal herein or to affirm the Judgment of the Supreme Court of Pennsylvania on any or all of the following grounds:

1. The Appeal does not present a substantial Federal question.

2. The Appellant seeks to raise a question involving the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment *now* whereas it was not raised or passed on by the Courts below, is not substantial, and on the merits it is clear that the Constitutional rights of Appellant have not been violated.

3. The Judgment appealed from rests on an adequate non-Federal basis.

4. The Appeal was not taken in conformity to Statute and Rules.

## OPINIONS BELOW.

The Opinion of the Supreme Court of Pennsylvania is reported at 437 Pa. 536 (1970) and affirms the Opinion and Order of the Court of Common Pleas of Delaware County, Pennsylvania, as reported at 56 Delaware Co. Rep. 264 (1969). Both Opinions are set forth in Appendix A at pages A1-A16 of Appellant's Jurisdictional Statement.

## STATUTES INVOLVED.

The Statutes of the Commonwealth of Pennsylvania involved are:

The Public School Code, Act of March 10, 1949, P. L. 30, Art. VII, section 721, 722 and 672 (24 P. S. 7-721, 7-722, 6-672). The Eminent Domain Code, Act of June 22, 1964, P. L. 84, Art. V, section 403(B) (26 P. S. 1-403), as set forth in Appendix B of Appellant's Statement of Jurisdiction and also in Appendix herein, pp. 15-18.

The United States Statute 28 U. S. C. 1257 is also set forth in Appendix herein, pp. 18-19.

## STATEMENT.

On November 9, 1967, the Board of School Directors of the School District of Haverford Township, Delaware County, Pennsylvania, at a regularly scheduled public meeting, passed and adopted a Resolution condemning the subject property owned by the Connelly Foundation. The Declaration of Taking was filed with the Delaware County Court on November 10, 1967. The Appellant Connelly Foundation, Owner of the premises is a non-profit Pennsylvania corporation formed in 1955. The Corporate Charter of Appellant provides:

> "The corporation does not contemplate pecuniary gain or profit, incidental or otherwise, to its members. Its purposes are as follows: The corporation shall be operated exclusively for religious, charitable, scientific, literary, or educational purposes.
>
> 'A. The activities which the corporation shall carry on from time to time shall be such as may be determined by the Board of Directors to promote the public welfare whether such activities be purely religious, charitable, scientific, literary, or educational, or whether they be a combination of such purposes'."

The property condemned, hereinafter sometimes referred to as the Connelly Property, consists of approximately seventeen (17) acres with buildings thereon erected. Together with adjoining properties known as The Little Sisters of the Assumption and the Lloyd Properties, the Connelly Property forms a tract of some forty-four (44) acres which the School District requires for a new Middle School providing for approximately twenty-one hundred (2100) students. The School District has acquired the Little Sisters of the Assumption property by purchase and the Lloyd property by condemnation followed by Agreement, Settlement and Deed.

In 1962, the Connelly Foundation purchased the Connelly property with the same buildings thereon now existing for One Hundred and Twenty-five Thousand ($125,000.00) Dollars. Since that time it has allowed two groups of Sisters of religious orders to occupy the property. However, on November 9, 1967, it had been unoccupied since August, 1967, when the Holy Rosary Sisters, who had been occupying it on a temporary emergency basis because of a fire in their former home in Radnor Township, moved out to another location where they had built their own home. Appellant is in error and misleading when he says in his Statement that the property was used during this time for religious purposes; it wasn't used at all (Delaware County Court's Findings of Fact Nos. 20, 35. Appellant's Statement of Jurisdiction, Appendix A). Incidentally religious uses are allowed under the applicable provisions of the Haverford Township Zoning Ordinance as a special exception. An application for such a special exception was filed and a hearing fixed for December 2, 1962, when the application was withdrawn (Delaware County Court's Findings of Facts Nos. 19, 20, Appellant's Statement of Jurisdiction, Appendix A).

The Appellant Connelly Foundation filed Preliminary Objecitons to the Declaration of Taking and after rather extensive testimony and argument, the Delaware County Court dismissed the Preliminary Objections. From the Decree of the Delaware County Court, the Connelly Foundation took an appeal to the Supreme Court of Pennsylvania and put before that Court the following two (2) questions in its Brief:

> A. Whether Appellant is a religious association so as to render property held by it for religious purposes exempt from condemnation under section 721 of the Public School Code of 1949.

B. Whether a pledge of tax revenues by this Appellee as security to pay just compensation is sufficient to satisfy the requirements of the Due Process Clause of the 14th Amendment of the United States Constitution.

On April 22, 1970, the Supreme Court of Pennsylvania handed down an Opinion affirming the Lower Court's Order and agreeing with the Lower Court that the Connelly Foundation, although a Charity, was not a "Religious Association", and that the pledge of the School District's taxing power was sufficient security to pay Appellant just compensation and to fulfill the requirements of due process. The Opinion of the Supreme Court and the findings, conclusions and Decree of the Delaware County Court are set forth in Appendix A of Appellant's Jurisdictional Statement. The findings and conclusions of the Delaware County Court give a detailed but concise summary of the background of the case.

It is to be remarked that in both the County and the Supreme Courts below the Appellant Connelly Foundation failed to present or to raise any question or contention that any provision of the Constitution of the United States or its Amendments was involved in the judicial determination of the question of whether the Appellant was a "Religious Association" under the terms of section 721 of the Public School Code (Appendix p. 17). It is true that Appellant attempted to raise a Constitutional issue of due process in regard to the security provided under section 403(b) of the Eminent Domain Code (Appendix p. 18) but no Constitutional question involving the meaning of "Religious Association" exemption was ever mentioned.

## ARGUMENT.

### I. On the Holding That the Appellant Is Not a "Religious Association" and Thus Its Property Not Exempt Under the Public School Code.

In both the County and the State Supreme Court below the Appellant failed to present or raise any question, contention, suggestion, pleading or argument that any provision of the Constitution of the United States or its Amendments was involved in the judicial determination of the question of whether or not the Appellant was exempt as "a Religious Association" under the terms of section 721 of the Public School Code (Appendix p. 17). The Appellant sought simply to establish that Appellant was "a Religious Association".

It may be as Appellant argues that religion no longer necessarily involves theism, i.e. belief in the existence of God or a God; but it does not follow from this premise that the Connelly Foundation is a "religious association" or indistinguishable from associations that are undeniably religious. The cases cited by Appellant, *Welsh v. U. S.*, 38 LW 4486, #76 October T, 1969, and *U. S. v. Seeger*, 380 U. S. 163, dispensing with the necessity of theism and perhaps traditional concepts of religion in determining whether or not one's beliefs and "scheme of things" function as a basis for deep conscientious scruples exempting one from military service do not help the Appellant really. Unlike the draft exemption Statute involved in the *Welsh* and *Seeger* cases, the Statutory Exemption involved in the instant case does not specify or require theism.

Furthermore the Court majority opinion in *Welsh* specifically stated it was not passing on any Constitutional question raised; the case came up through the Federal System involving a Federal Statute. In the instant case however, no Federal Court or Federal Statute is involved, and

Appellant must present a substantial Constitutional question before the Court will review his case.

The Appellant the Connelly Foundation argues that it is "a Religious Association" and its property exempt from condemnation under section 721 of the Public School Code because 98% of its charitable contributions have been to religious organizations and because it has, since 1962, when it acquired the property, allowed two groups of Sisters of religious orders to occupy the property until it became vacant about two months before it was condemned by the Appellee: This argument fails to give proper consideration to the Charter or Articles of Incorporation of the Connelly Foundation, the Character of its Board of Directors, and what the words "Religious Association" mean. Black's Law Dictionary gives the following definition of Religious Society or Association:

> "A body of persons associated together for the purpose of maintaining religious worship. The communicants of a denomination who statedly attend services in the church edifice. *Fiske v. Beaty*, 201 N. Y. S. 441, 444; 206 App. Div. 349. A church and society are often united in maintaining worship, and in such cases, the society commonly owns the property, and makes the pecuniary contract with the minister. But in many instances, societies exist without a church and churches without a society. *Silsby v. Barlow*, 16 Gray (Mass.) 330; *Weld v. May*, 9 Cush. (Mass.) 188; *Hebrew Freed School Assn. v. New York*, 4 Hun. (N. Y.) 449."

In Corpus Juris Secundum, religious society (or Association) has the following definition:

> "A religious association is made up of individuals who have associated together for religious as opposed

to secular purposes." 76 C. J. S. Religious Societies, Sec. 1(a), p. 734.

Of course, it is not necessary that the Condemnee be a Church to be exempt. On the other hand, the Connelly Foundation Corporate Charter provides:

> "The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise, to its members. Its purposes are as follows: The Corporation shall be operated exclusively for religious, charitable, scientific, literary or educational purposes.
>
> A. The activities which the Corporation shall carry on from time to time shall be such as may be determined by the Board of Directors to promote the public welfare whether such activities be purely religious, charitable, scientific, literary, or educational, or whether they be a combination of such purposes."

It is obvious that "religious purposes" is only one of the five distinct purposes specified in its Articles and the only one that would give it exemption under the Public School Code. Furthermore, its Board of Directors under the Charter may as they may be inclined from time to time in their discretion, pick, choose and change the Foundation's activities as long as they adhere to any one or more of the five stated purposes.

The Connelly Foundation does not profess to meet for religious worship or instruction. The Board of Directors is composed mainly of members of the Connelly family and in nowise does it allege, pretend, profess or consent to be dominated, controlled or subservient or subordinate to any religious society, sect, denomination, congregation, Church, or any substitute therefor. There is no evidence or record of it espousing or holding any belief playing the role of religion nor of enunciating such a belief. A commendable

charitable organization the Connelly Foundation is; a religious association, it is not.

Apart from the Argument on the merits as outlined above, the Appellant is faced with a fatal omission. At no time or place in the courts below did the Appellant raise any right or prohibition under the Establishment Clause to the First Amendment to the United States Constitution or the Equal Protection Clause of the Fourteenth Amendment nor were the Courts asked, nor did the Courts consider any such Constitutional aspects. The first time Appellant raises these Constitutional rights or prohibitions is in the Jurisdictional Statement that is filed in this Court. This is too late to raise any Federal question for the first time. It is the record below which must affirmatively show a raising of the Federal issue. See *White River Lumber Co. v. Arkansas ex rel. Appelgate,* 279 U. S. 692, 700; *Whitney v. California,* 274 U. S. 357, 362-3; *Hiawassee River Power Co. v. Carolina-Tennessee Power Co.,* 252 U. S. 341, 344; *Thomas v. Iowa,* 209 U. S. 258. Review in the United States Supreme Court is limited to specific Federal questions that were properly raised in the State Courts. *Whitney v. California,* 274 U. S. 357, 362-3; *Dewey v. Des Moines,* 173 U. S. 193, 197-8; *Wilson v. Cook,* 327 U. S. 474, 483-4; *Adler v. Board of Education,* 342 U. S. 485, 496; *State Farm Mutual Ins. Co. v. Duel,* 324 U. S. 154, 160-1.

The Appellant is likewise precluded from urging a Federal issue that was neither raised not decided below even though such issue might have been raised. *Safeway Stores v. Oklahoma Grocers,* 360 U. S. 334, 342 n. 7; *Cardinale v. Louisiana,* 394 U. S. 437, 438. The Rule that in cases coming from State Courts the Supreme Court may review only those issues which were presented to the State Court is not discretionary but jurisdictional. *Amalgamated Food Employees Union v. Logan Valley Plaza,* 391 U. S.

308, 334. Appellant didn't raise any Constitutional question in the State Courts involving the exemption, nor did the State Courts rule on any such alleged Constitutional question.

It appears that there is a further defect in Appellant's Appeal. Appellee submits that an Appeal is not the proper procedure in this case in the first place. The four cases cited by Appellant under the heading "Jurisdiction" on which he relies to "sustain the Jurisdiction of this Court to review the Judgment on Appeal" pre-date the Judiciary Act of 1925 and came to the Court on the old Writ of Error. All of these cases had *attacked the validity* of the State Statute involved and the Lower Court had sustained the validity. In the Lower Courts in the instant case, however, the Appellant never questioned the validity of the Public School Code or of "the religious association" exemption specified therein. Nor were the Lower Courts asked to rule on its validity. The Appellant even now does not attack the validity of the Statute. Thus, no appeal jurisdiction under 28 U. S. C. 1257 exists in this case. Appellee's other reeasons for dismissal set forth in this Motion apply with at least the same force and effect if the Appeal is regarded as a Petition for Certiorari.

**II. On the Pledge of Appellee's Taxing Power as Sufficient Security for the Payment of Just Compensation for the Condemnation of Appellant's Property.**

The power of the Appellee to condemn land is conferred by Pennsylvania Statute, the Public School Code, the Act of March 10, 1949, P. L. 30, Article VII, Section 721 et seq. (24 P. S. 7-721 et seq.). The Statute is set forth in Appendix hereof. Section 721 (24 P. S. 7-721) provides that the effect of condemnation is to pledge the tax revenue to the School District for all damages which might be sustained by the Owner on account of the taking of the property. In-

cidentally, the legality of this Statute has been upheld by the decisions of the Lower Courts, not only in the instant Case, but in *Spahn v. Joint Board of School Directors*, 381 Pa. 338, and in *Jerry v. Weist*, 326 Pa. 554.

There is no doubt that due process requires adequate security for the payment of just compensation. However, the case first cited by Appellant, *Cherokee Nation v. Southern Kansas Railway Company*, 135 U. S. 641 (1890), is not in any way apposit to the instant Case. *Cherokee* involved condemnation of Cherokee land by the Railroad acting under a Federal Statute. Of course, the Railroad didn't have any taxing power so there was none to pledge as security. The Supreme Court of the United States held inter alia that the security required by the Statute—twice the value of the land—was sufficient. The taxing power of the School District in this instant Case far exceeds twice the value of the Connelly property.

As a practical matter, the Appellant Connelly Foundation has no grounds for fear the School District cannot and will not pay him. It is a matter of record, undisputed, and the County Court found that Connelly paid only One Hundred and Twenty-five Thousand ($125,000.00) Dollars for the property in 1962 with the same buildings thereon as now exists (Delaware County Courts Finding of Fact No. 35, Appendix A of Appellant's Jurisdictional Statement). The evidence of market value in July, 1968, given by an appraiser whom Court and Counsel of both parties agree is eminently qualified, was Two Hundred and Eighty Thousand ($280,000.00) Dollars (Delaware County Courts Finding of Facts Nos. 32, 30, Appellant's Jurisdictional Statement Appendix A). There was no other evidence offered in this case relating to the value of the Connelly property. Of course, the final value will be determined by a jury of view in further procedures and the Appellant will have a right of Appeal if dissatisfied with the result.

The School District has *unlimited ad valorem taxing power* to pay lease rentals to a school authority to finance construction of the proposed school and to pay sinking fund charges incurred in connection with school building projects approved by the Department of Public Instruction. (Pennsylvania Public School Code, Act of March 10, 1949, P. L. 30, Article VII (24 P. S. 6-672), Appendix pp. 15-16 and the opinion of the Supreme Court of Pennsylvania below.) As has been remarked, the evidence of value of the subject property is Two Hundred and Eighty Thousand ($280,000.00) Dollars. The remaining non-electoral and electoral borrowing capacities of the School District are $1,717,086.25 and $4,729,173.50, respectively. (Delaware County Court's Findings of Fact 27, Appellant's Statement of Jurisdiction Appendix A). Thus the School District can choose even without resort to Authority Financing (which is discussed below) to issue its own non-electoral bonds to borrow the money to provide just compensation to the Connelly Foundation, and use its unlimited ad valorem taxing power to pay the sinking fund charges since the school project has been approved by both the various Pennsylvania State Departments involved and the Delaware County Board of School Directors (County Court's Findings of Fact Nos. 16, 17, Appendix A of Appellant's Jurisdictional Statement).

On the other hand the total cost of the whole project is anticipated to be $9,237,300.00 of which $8,920,000.00 will be financed by Bonds. This total cost includes structure, Architect, movable fixtures and equipment, site costs, including acquisition, Counsel fees, Authority expenses and other costs. (Delaware County Court's Finding of Facts Nos. 24, 25, Appellant's Jurisdictional Statement Appendix A.) With the thirty (30) year bond issue recommended by the School Board and its financial advisors, the 1968 tax figures, and an anticipated interest rate of four and one-half (4½%) per cent, the anticipated total annual cost of the project will

result in a tax millage increase of only 11.26 mills over the present millage of seventy-four (74) mills in the School District. This figure would increase approximately one-quarter (¼) of a mill for every one-quarter (¼%) per cent increase in the actual interest. It is to be noted that the 1968 Real Estate Assessment for tax purposes in this School District is $62,941,725.00 (Delaware County Court's Finding of Facts Nos. 21-24, Appellant's Jurisdictional Statement Appendix A). It is thus seen that the value of the Connelly property $280,000.00 is only a shade over three per cent (3%) of the total cost of the project of $9,237,300.00, and yet the whole project will result in only an anticipated tax millage increase of something less than twelve (12) mills. Of course, the School Board sets the tax millage.

The project including the purchase of the land involved and the building of the School, would be financed as are most of the other major School projects through the existing Haverford Township School District Authority which is not limited by the remaining non-electoral and electoral barring capacities of the School District of $1,717,086.25 and $4,729,173.50 respectively (Delaware County Court's Findings of Facts Nos. 26, 27). When a School District uses Authority Financing, contracts or engagements which create obligations not exceeding current revenues do not constitute debt within the contemplation of the Constitution of Pennsylvania limiting School District debt. *Conrad v. Pittsburgh*, 421 Pa. 492; *Greenhall v. Woolworth*, 361 Pa. 543; *Detweiler v. School District of Hatfield*, 376 Pa. 555. In such circumstances the Authority acts as an alter ego of the School District to undertake Public School projects which the School District by reason of its debt limitations could not otherwise undertake. *Southwest Delaware County Municipal Authority v. Aston Township*, 413 Pa. 526. Furthermore, the School District has unlimited ad valorem taxing power to pay lease rentals to a School Authority to

finance the construction of the proposed Middle School, as provided in the Public School code Section 672 (Appendix hereof) as the Supreme Court of Pennsylvania has stated on the last page of its Opinion which is set forth in Appendix A of Appellant's Jurisdictional Statement.

The School Board's application for approval of the School project, including the detailed costs, financing plan and selection of site, has been approved by both the various Pennsylvania State Departments involved and the Delaware County Board of School Directors (County Court's Findings of Fact Nos. 16, 17, Appendix A of Appellant's Jurisdictional Statement).

The Pledge of the tax revenues by the School District is certainly sufficient security to pay condemnee Appellant just compensation to satisfy the Due Process Clause.

## CONCLUSION.

For the foregoing reasons in support of this Motion, the Appellee respectfully submits that the Judgment and decree of the Supreme Court of Pennsylvania should be affirmed and the appeal dismissed.

Respectfully submitted,

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# APPENDIX.

## Statutes Involved.

Sections 672, 721 and 722 of the Pennsylvania Public School Code, Act of March 10, 1949, P. L. 30, Art. VII, 24 Purd. Stat. §§ 6-672, 7-721 and 7-722 reads as follows:

§ 6-672 *Tax Levy; Limitations*

(a) In all school districts of the second, third, and fourth class, all school taxes shall be levied and assessed by the board of school directors therein, during the month of February or March or April or May or June each year, for the ensuing fiscal year, except in districts of the second class where the fiscal year begins on the first day of January, in which the school taxes shall be levied and assessed during the month of October or November of each year. In school districts of the second class the tax rate shall not exceed twenty mills on the dollar, and in school districts of the third and fourth class shall not exceed twenty-five mills on the dollar, on the total amount of the assessed valuation of all property taxable for school purposes therein. Each school district of the second, third or fourth class may also collect a per capita tax on each resident or inhabitant of such district, over twenty-one years of age, as herein provided.

(b) Boards of school directors of districts of the second, third, and fourth classes are hereby authorized and directed to levy annually, a tax on each dollar of the total assessment of all property assessed and certified for taxation therein, (1) to pay up to and including the full amount of the minimum salaries and increments of the teaching and supervisory staff pro-

vided for herein, (2) to pay rentals due any municipality authority or nonprofit corporation or due the State Public School Building Authority, (3) to pay sinking fund charges incurred in connection with school building projects approved by the Department of Public Instruction, and (4) to pay for the amortization of a bond issue which provided a school building prior to the first Monday of July, 1959.

(c) The tax levied to pay the minimum salaries and increments of the teaching and supervisory staff shall not be invalidated or affected by reason of the fact that in determining the amount to be raised by such tax for the payment of minimum salaries and increments no deduction was made for appropriations or reimbursements paid or payable by the Commonwealth to the School Distrtict which are applicable directly or indirectly to the minimum salaries and increments. None of said taxes shall be invalidated or affected by reason of the fact that it may increase the total annual school tax levy of any school district beyond the millage fixed or limited by this section.

(d) The boards of school directors of all independent school districts in which the board members are elected or appointed by court, may, annually, levy a tax as herein authorized, at the same time and in the same manner as other school districts of the same class to which such independent district belongs, in an amount which shall be sufficient with all other taxes imposed by such district to pay the expenses of such district as set forth in subsection (b) of this section and to pay all other expenses and requirements of such district: Provided, That such tax shall not be more than seventy-five (75) mills on the dollar on the total amount of the assessed valuation of all property

taxable for school purposes within such district. Each such district may also collect, annually, a per capita in an amount of not less than one dollar ($1) and not more than ten dollars ($10) on each resident or inhabitant of such district over twenty-one (21) years of age.

§ 7-721 *Condemnation of Land*

Whenever the board of school directors of any district cannot agree on the terms of its purchase with the owners or owners of any real estate that the board has selected for school purposes, such board of school directors, after having decided upon the amount and location thereof, may enter upon, take possession of, and occupy such land as it may have selected for school purposes, whether vacant or occupied, and designate and mark the boundary line thereof, and thereafter may use the same for school purposes according to the provisions of this act: Provided, That no board of school directors shall take by condemnation any burial ground, or any land belonging to any incorporated institution of learning, incorporated hospital association, or unincorporated church, incorporated or unincorporated religious association, which land is actually used or held for the purpose for which such burial ground, institution of learning, hospital association, church, or religious association was established.

§ 7-722 *Security for Damages; Fee Simple Title*

The school funds which may be raised by taxation in any school district shall be pledged, and hereby are made security, to the owner or owners of any property taken for school purposes, for all damages they may sustain on account of taking of such property by the district for school purposes.

The title to all real estate acquired by any school district by condemnation proceedings shall be vested in such school district in fee simple.

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Section 403 of the Eminent Domain Code, Act of June 22, 1964, P. L. 84, Art. V §§ 1-403(B) (26 P. S. § 1-403) reads as follows:

§ 1-403 *Security Required*

(a) Bond. Except as hereinafter provided, every condemnor shall give security to effect the condemnation by filing with the declaration of taking its bond, without surety, to the Commonwealth of Pennsylvania for the use of the owner or owners of the property interests condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law.

(b) Power of Taxation. Where a condemnor has the power of taxation, it shall not be required to file a bond with the declaration of taking. The funds raised, or lawful to be raised, by the power of taxation of the condemnor shall be deemed pledged and are hereby made security for the payment of the damages as shall be determined by law.

(c) Insufficient Security. The court, upon preliminary objections of the condemnee under and within the time set forth in section 406(a),[1] may require the condemnor to give such bond and security as the court deems proper, if it shall appear to the court that the bond or power of taxation of the condemnor is not sufficient security.

28 U. S. C., Section 1257 reads as follows:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."